

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CHARIS L. KELLEY

§

§

vs.

§

Civil Action No. 4:09-CV-01749

§

TRANS UNION LLC, *et al.*

§

**MOTION TO DISMISS OR MOTION FOR MORE DEFINITE STATEMENT BY  
CAVALRY INVESTMENTS, LLC AND CAVALRY PORTFOLIO SERVICES, LLC**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. This motion is brought pursuant to Fed. R. Civ. P. 12(b)(6)(e).

2. On June 8, 2009, Plaintiff CHARIS L. KELLEY ("Kelley") filed Complaint in the above-styled cause of action, and in the style, identified defendants as **CAVALRY INVESTMENTS, LLC** and **CAVALRY PORTFOLIO SERVICES, LLC**.

3. On June 8, 2009, Plaintiff caused to be issued summons addressed to **CAVALRY INVESTMENTS, LLC** and **CAVALRY PORTFOLIO SERVICES, LLC**.

4. Although named in the Complaint, the only allegations of fact in the Complaint concerning **CAVALRY INVESTMENTS, LLC**, are as follows:

a. that **CAVALRY INVESTMENTS, LLC** is a "debt collector" as defined under by FDCPA 1692a(6), a "person" as defined by FCRA 1681a(b), a "reseller" as defined by FCRA 1681a(u), and a "furnisher" as contemplated by FCRA 1681s-2(a) & (b) (Complaint at ¶ 8);

b. that "[e]ach Defendants listed in Plaintiff's Complaint is reporting erroneous, adverse, inaccurate, incorrect, fraudulent and incomplete data regarding Plaintiff's Name, Residents, Employments, Credit Worthiness, Financial Transactions and Business Relationships to potential creditors which has in part caused Plaintiff to be denied

credit" (unnumbered paragraph entitled "Factual Allegations" );

d. that **CAVALRY INVESTMENTS, LLC** "willfully and negligently obtain [sic] Plaintiff's credit report without Plaintiff's permission . . . ." (Complaint at ¶ 27);

e. that **CAVALRY INVESTMENTS, LLC** "willfully and negligently failed to validate Plaintiff's alleged debt and continue to report to Credit Bureau . . . ." (Complaint at ¶ 28); and

f. that **CAVALRY INVESTMENTS, LLC** "willfully and negligently 'Re age' fraudulent account by updating date of last activity on Plaintiff's credit report in hopes of keeping negative information on an account . . . ." (Complaint at ¶ 29).

5. Although named in the Complaint, the only allegations of fact in the Complaint concerning **CAVALRY PORTFOLIO SERVICES, LLC**, are as follows:

a. that **CAVALRY PORTFOLIO SERVICES, LLC** is a "debt collector" as defined under by FDCPA 1692a(6), a "person" as defined by FCRA 1681a(b), a "reseller" as defined by FCRA 1681a(u), and a "furnisher" as contemplated by FCRA 1681s-2(a) & (b) (Complaint at ¶ 9);

b. that "[e]ach Defendants listed in Plaintiff's Complaint is reporting erroneous, adverse, inaccurate, incorrect, fraudulent and incomplete data regarding Plaintiff's Name, Residents, Employments, Credit Worthiness, Financial Transactions and Business Relationships to potential creditors which has in part caused Plaintiff to be denied credit" (unnumbered paragraph entitled "Factual Allegations" );

d. that **CAVALRY PORTFOLIO SERVICES, LLC** "willfully and negligently obtain [sic] Plaintiff's credit report without Plaintiff's permission . . . ." (Complaint at ¶ 30);

e. that **CAVALRY PORTFOLIO SERVICES, LLC** "willfully and negligently

failed to validate Plaintiff's alleged debt and continue to report to Credit Bureau . . . .”(Complaint at ¶ 31); and

f. that **CAVALRY PORTFOLIO SERVICES, LLC** “willfully and negligently ‘Re age’ fraudulent account by updating date of last activity on Plaintiff’s credit report in hopes of keeping negative information on an account . . . .”(Complaint at ¶ 32).

6. Plaintiff’s Complaint should be dismissed because it fails to allege facts sufficient to support a claim for relief. A plaintiff must allege sufficient facts under a cognizable legal theory that would entitle him to some form of legal remedy. *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff must do more than simply make a formulaic recitation of the elements of a cause of action. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The plaintiff must plead enough facts to state a claim that is plausible on its facts. *Id.* at 570. Taking the pleading in the light most favorable to the Plaintiff, it is beyond doubt that the Plaintiff can prove no facts to support his claim against Cavalry. *Garrett v. Commonwealth Mortgage Corp. of America*, 938 F.2d 591, 594 (5th Cir. 1991).

7. It is apparent that the Plaintiff’s complaint is frivolous and **CAVALRY INVESTMENTS, LLC and CAVALRY PORTFOLIO SERVICES, LLC** request this Court to enter an order dismissing Plaintiff’s claims against **CAVALRY INVESTMENTS, LLC and CAVALRY PORTFOLIO SERVICES, LLC**.

8. In the alternative, **CAVALRY INVESTMENTS, LLC and CAVALRY PORTFOLIO SERVICES, LLC** request the Court to enter an order compelling Plaintiff to amend the complaint within ten (10) days of the date of the order for a more definite statement of those claims against **CAVALRY INVESTMENTS, LLC and CAVALRY PORTFOLIO**

**SERVICES, LLC**; and should Plaintiff fail to timely amend that this Court enter an order dismissing Plaintiff's claims against **CAVALRY INVESTMENTS, LLC** and **CAVALRY PORTFOLIO SERVICES, LLC**.

**Respectfully submitted,**

**HANSZEN ■ LAPORTE, LLP**

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**ATTORNEYS FOR DEFENDANT,  
CAVALRY PORTFOLIO SERVICES**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument was served electronically or via regular, first-class mail, postage pre-paid, on this 30<sup>th</sup> day of June, 2009, upon the following:

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**ATTORNEYS FOR DEFENDANT FIRST NATIONAL CREDIT CARD CENTER, INC.**

/s/ Amy L. Mitchell  
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